STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of: Joint Application of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for Approval of Solar Choice Metering Tariffs Pursuant to S.C. Code Ann. Section 58-40-20	)	**DOCKET NO. 2020-264-E** **DOCKET NO. 2020-265-E**

REBUTTAL TESTIMONY

OF

EDWARD FINLEY

ON BEHALF OF

THE SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, SOUTHERN ALLIANCE FOR CLEAN ENERGY, and UPSTATE FOREVER

February 22, 2021

TABLE OF CONTENTS

I. Introduction and Qualifications

Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS AND OCCUPATION.

A: My name is Edward Finley. My business address is 2024 White Oak Rd., Raleigh, NC 27608. I am an attorney in the private practice of law.

Q: PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.

A: I have an AB and JD from the University of North Carolina at Chapel Hill. From 1974 through 2007 I practiced law in Raleigh concentrating in a public utility regulatory practice before state and federal regulatory commissions and state and federal courts. From 2007 to 2019 I served as Chairman of the North Carolina Utilities Commission. While on the Commission I served, among other positions, as Chairman of the NARUC Electric Committee, Vice President of NARUC and a member of its Executive Committee, President of the Organization of PJM States, Inc. and as a utility commissioner representative of the EPRI Advisory Board.

Q: ON WHOSE BEHALF ARE YOU TESTIFYING?

A. I am testifying on behalf of the South Carolina Coastal Conservation League, Southern Alliance for Clean Energy, and Upstate Forever.

II. Summary of Testimony

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to issues raised by the Office of Regulatory Staff ("ORS") in opposition to the stipulated rates and tariffs sponsored by Duke and supported by the other stipulating parties in these dockets.

Q. PLEASE PROVIDE A SUMMARY OF YOUR TESTIMONY.

A. First, I discuss how generally applicable rate making principles can help guide the Commission in reviewing the sometimes competing policy directives in Act 62. Then I show how balancing the directives in Act 62 to support customer access to solar energy and avoid disruption to the growing market for customer-scale distributed energy resources should be viewed in concert with the directive to eliminate cost shifts to the greatest extent practicable. Next, I address the problems with ORS' (1) decision to consider the cost-shift issue in isolation, without regard for these competing statutory objectives and (2) view that the Commission should use a different allocator for generation and transmission for setting solar choice tariffs than is otherwise used for setting other rates. I then discuss the benefits of comprehensive settlements that reflect a broad group of stakeholders and that accomplish the goals set forth by Act 62.

III. Generally Applicable Rate Making Principles Assist the Commission in Evaluating the Sometimes Competing Directives of Act 62 in a Fair and Balanced Manner

Q. DO YOU HAVE GENERAL OBSERVATIONS WITH RESPECT TO HOW THE RATE MAKING PROCESS PROVIDES CONTEXT WITHIN WHICH TO ADDRESS THE ISSUES RAISED IN THESE DOCKETS?

A. Yes. By way of background, the process of establishing electric utility rates is an inexact science and one where substantial subjective judgment on the part of regulators is required. Issues involving concepts such as cost causation, equity, subsidization, rate shock, and incentives are called into play, resolution of which requires application of substantial subjective judgment. Preferably, rates are established in a general rate case. Two overarching steps are involved. First, the revenue requirement must be calculated. Second, rates must be designed to enable

recovery of the costs of service from the classes of consumers, e.g., residential, industrial and commercial. Cost of service studies assist in designing rates that fairly and equitably establish rates that permit accurate cost recovery for each class and provide the appropriate price signals to avoid economic waste. The design of cost of service studies and the variations among them are other areas where substantial differences of opinion arise and where the exercise of subjective judgment is required.

Q. PLEASE ADDRESS THE REQUIREMENT IN ACT 62 TO REDUCE COST SHIFTS "TO THE GREATEST EXTENT PRACTICABLE" IN LIGHT OF OTHER REQUIREMENTS OF THE ACT THAT MIGHT CONFLICT WITH THE EFFORT TO REDUCE COST SHIFTS.

A. The goals of the Energy Freedom Act are addressed in Section 1 of the Act, entitled "Renewable energy programs", which amends Title 58 of the 1976 Code by enacting S.C. Code Section 58-41-05. That section indicates that the overarching goal is to address renewable energy issues in a fair and balanced manner, considering costs and benefits to all customers of all programs and tariffs that relate to renewable energy and energy storage, both as part of the utility's power system and as direct investments by customers for their own energy needs and renewable goals.

Other provisions of the Act illustrate how the legislature values opportunities for customers to use DERs to save money. In Section 2 of the Act, for example, Section 58-27-845 is added to the Code to make findings and enumerations of electrical utility customer rights. Under this amendment customers are to be protected from rising utility costs. Customers are to be provided

opportunities to reduce or manage electrical consumption from electrical utilities in a manner that contributes to reductions in utility peak electrical demand and other drivers of electrical utility costs. Under the amendment every customer of an electrical utility has the right to a rate schedule that offers the customer a reasonable opportunity to employ such energy and cost savings measures as energy efficiency, demand response, and onsite distributed energy resources in order to reduce consumption of electricity from the electrical utility's grid and to reduce electrical utility costs.

Section 8 of the Act amends the Code by adding Section 58-37-60. This amendment charges the Commission and ORS to undertake an independent study to evaluate integration of emerging energy technologies. Section 10 of the Act amends Section 58-27-460 of the Code to require the promulgation and review of standards for interconnection of renewable energy facilities. Section 11 amends the Code by adding Section 58 27-2660 to develop consumer protection regulations regarding the sale or lease of renewable energy generation facilities.

Specifically, with respect to the issues in this case, the objectives of the Act are encouraging customer-owned renewable generation while at the same time preventing cost shifts to nonparticipating customers "to the greatest extent practicable." Where consumers are power producers as well as consumers, the difficult tasks of achieving equity and fairness are exacerbated. Likewise, establishing rates to encourage self-generation and at the same time seeking to prevent cost shifting, are to some extent, conflicting goals. The dividing line between the two objectives is not a bright one. Unless the rates are sufficiently

favorable to the self-generator, even if some minor cost shifting occurs, it could thwart "market-driven, private investment in distributed energy resources" in South Carolina and could disrupt "the growing market for customer-scale distributed energy resources." S.C. Code 58-40-20(A). And if subsidization is too great, undue discrimination against non-participants could result. Here the exercise of the Commission's subjective judgement to make decisions in the gray area is severely tested.

Other circumstances, such as compliance with a statute outside of a general rate case, the need to establish interim as well as permanent rates, and renewable generators coming on line at different times complicate the tasks. In my view, the phrase "to the greatest extent practicable" provides the Commission sufficient latitude to appropriately balance these potentially conflicting goals. The Act does not require zero cost shifts. The stipulation and application presented by Duke Energy and supported by the other intervenors, with the exception of ORS, fall appropriately within the legislative mandate and fulfills the other policy directives of Act 62.

Q. WHAT IS YOUR UNDERSTANDING OF THE TERM "COST SHIFT" WITHIN THE CONTEXT OF THE PROVISIONS OF ACT 62?

A. The term "cost shift" is not defined expressly in Act 62. Within the context of Act 62 it appears that the legislature had in mind a concept closely synonymous with "subsidization." However, subsidization itself is only a loosely defined concept, and complete elimination of subsidies does not take place. From a purely legal perspective, when applying the prohibition against treating customers unlawfully,

the term customarily used is "undue discrimination."[1] Simply because similarly situated customers or customer classes are treated differently as far as rates or quality of service are concerned, differences alone do not arise to undue discrimination. The operative adjective is "undue." Where one set of customers provides environmental attributes, this may justify different regulatory treatment. The regulator must apply its expert judgment when confronting issues such as these just like it does in approving rates allowing the utility a reasonable return while the rates customers must pay are as low as reasonably possible. And as this testimony seeks to illustrate, determining the extent to which rates or services discriminate in an undue fashion leaves great discretion to the regulator.

Q. IN ESTABLISHING UTILITY RATES IS IT POSSIBLE TO ELIMINATE ALL SUBSIDIZATION AND COST SHIFTS?

A. No. With limited exception, rates are not designed for each of the utility's customers. Rather, the rates are designed with broader rate classes in mind. This requires averaging of costs across the class. Some inequities or subsidizations are inevitable. As a result, there is always an element of cost shifting. As a simplistic example, the residential customer whose house is a short distance from the power plant is served with fewer costs than one 50 miles away, yet the rate options and

[1] *An Economic and Legal Analysis of Undue Discrimination*, Henderson & Burns, The National Regulatory Research Institute, 1989, ipu.ms.edu; *Unjust, Unreasonable, and Unduly Discriminatory: Electric Utility Rates and Campaign Against Rooftop Solar*, Ari Peskoe, Texas Journal of Oil and Energy Law, 2016, papers.ssrn.com. "The scale of the misalignment (between the IOU's costs and their recovery through rates) is important because PUCs have typically recognized that the precise matching of costs to rates is not feasible." p. 182 citing a 2013 NCUC decision stating in part: "but that even 'if cost of service evidence alone might suggest that adopted rates are unreasonably discriminatory, where non-cost factors justify differing rates for individual customer classes, the rates are not unreasonably discriminatory.'" n. 487.

costs to be borne are the same for both. Different econometric models exist for measuring the cost of service and for allocating costs among different classes. Choices over which model to use result in heated debate in rate adjustment proceedings, representatives of different classes asserting that unless their views are accepted, they will be subsidizing another customer class. Ratemaking is a dynamic process. Rates that are appropriate when established often fall out of balance over time.

Q. WITH RESPECT TO THE ISSUES RAISED IN THESE DOCKETS, PLEASE ADDRESS THE CHALLENGES PRESENTED TO IDENTIFY AND REDUCE SUBSIDIZATION AND COST SHIFTS.

A. When the effort, as it is in this case, is to redesign rates in response to legislation and outside of a general rate case to reduce cost shifting and accomplish other policy objectives, choices must be made to measure the extent to which the cost shifting reduction has been accomplished. Especially where rate redesign is the objective, commissions often resort to the concept of gradualism to move incrementally toward the ultimate goal to avoid rate shock and consumer disruption and thwarted expectations. The existence and scope of a potential cost shift differs depending on the mode of measurement used. Two measurements have been testified to by Duke witnesses here, a marginal cost measure and a fully distributed (or embedded) one. Some measurements show the self-generating customer class still being subsidized, although at significantly reduced levels, others show that this subclass now may be subsidizing the non-customer owned generating class. This example demonstrates that subsidization or cost shifts can be minimized but seldom completely eliminated by every measure.

Q. IN YOUR VIEW HAVE TARIFFS AND RATE MAKING DESIGN EVOLVED IN AN EFFORT TO ENCOURAGE SELF-GENERATION WITHOUT UNDUE IMPACT UPON NON-PARTICIPATING CUSTOMERS?

A. Yes. In recent years, the process of designing fair and equitable rates where a portion of the consumer base has installed renewable generation facilities has evolved. Feed-in tariffs are not presently promoted. While still falling under the rubric of "net metering," the rate schedules and riders agreed to in the stipulation are far more sophisticated than the tariffs initially employed when self-generation first became popular. "Net metering" arose as a term describing a meter that measures the flow of electrons in two directions with the price paid for the electrons consumed equivalent to the price paid for those exported. Over time major strides have been made to maximize the benefits of consumer-installed renewable generation and reduce, to the extent practicable, subsidization of participating consumers by nonparticipating ones.

Q. AS YOU MENTIONED ABOVE ONE OF THE TWO OVERARCHING OBJECTIVES OF ACT 62 IS TO ENCOURAGE CUSTOMER-OWNED RENEWABLE GENERATION. CAN YOU BE MORE SPECIFIC AND IDENTIFY PROVISIONS OF THE ACT TO WHICH YOU REFER?

A. Yes. Act 62 amends Section 58-40-20 to include provisions such as the following: (A) It is the intent of the General Assembly to: (1) built upon the successful deployment of solar generating capacity through Act 236 of 2014 to continue enabling market-driven private investment in distributed energy resources across the State by reducing regulatory and administrative burdens to customer installation and utilization of onsite distributed energy resources; (2) avoid disruption to the growing market for customer-scale distributed energy resources;

(G) In establishing a successor solar choice metering tariff, the commission is directed to: (1) eliminate any cost shift to the greatest extent practicable on customers who do not have customer-sited generation while also ensuring access to customer-generator options for customers who choose to enroll in customer-generator programs; and (2) permit solar choice customer- generators to use customer-generated energy behind the meter without penalty.

Q. CAN YOU ADDRESS AT A HIGH LEVEL THE MANNER IN WHICH THE RATES AND TARIFFS SUPPORTED BY THE STIPULATION PRESENTED TO THE COMMISSION ACCOMPLISH GOALS ESTABLISHED IN ACT 62?

A. Some benefits of consumer-owned generation are shared by the entire body of customers. Where the companies' consumers install solar facilities on their premises, this distributed electric resource is carbon free and replaces generation fueled at least in part by coal and natural gas. This reduces greenhouse gas emissions and other pollutants. The net metering customers must receive service on price variant or time of use rates. This promotes reduced consumption on peak, lowering demand and over the long run reducing costs for all customers. To the extent the customer-owned generation generates on peak or during a portion of the hours when rates are higher under the variant rate schedules, they receive greater credit under the rider. This provides incentives to generate at times to maximize the credit where possible. This again reduces Company generated energy from coal or natural gas and reduces the need for new generation, transmission or perhaps distribution facilities. To the extent distributed energy resources generate on peak,

especially where combined with storage, the cost of central station generation and transmission and perhaps distribution facilities can be reduced or deferred.

Q. MOVING BEYOND THE BENEFITS TO ALL CUSTOMERS PLEASE ADDRESS THE BENEFITS TO CUSTOMERS THAT INSTALL RENEWABLE GENERATION.

A. In addition to providing benefits to all customers, consumers who install rooftop solar, for example, enjoy the prospect of reducing their costs of electric service over the long term, depending on the costs of installation, financing costs, payback periods and usage patterns. The General Assembly through Act 62 seeks to encourage this activity as fulfilling the best interests of the State of South Carolina.

From the outset, a primary criticism of early net metering tariffs was that where the owner of the rooftop solar array, for example, received a credit from the incumbent electric service provider at the equivalent of the retail price, nonparticipating residential customers subsidize those with rooftop solar because the cost of transmission and distribution was shifted to the nonparticipating customers. DER advocates disputed this criticism by maintaining that at least on some circuits, demand was reduced and upgrades were deferred or avoided. The rate schedules and riders under the stipulation address this potential cost shift by imposing the grid access charge on solar PV systems of 15 kW or larger, those systems that are more likely to export a significant amount of electricity to the grid.

Q. ARE THERE OTHER FEATURES IN THE STIPULATION THAT CONTAIN FEATURES TO REDUCE SUBSIDIZATION AND COST SHIFTS?

A. The stipulated rates contain many other features that reduce potential subsidization or cost shifting. The imports and exports are netted out on a monthly basis, not

annually or seasonally. Also, for many months, where there are exports for which the renewable generation customer is reimbursed, the reimbursement is at avoided costs, not at the higher retail rate based on fully embedded costs. Of course, establishing avoided costs under PURPA guidelines requires substantial subjective judgment and raises many issues where cost shifting or subsidization must be addressed. As stated above, the renewable generators receive service on the basis of time of use rates. The rates are higher from 6:00 to 9:00 pm annually and from 6:00 to 9:00 am in the winter months. The renewable generator's output is netted against the inflow and also priced on the basis of timing. Solar generation peaks in the midday hours when most rates per kWh are lower, so the compensation for kWhs generated then is likewise less, thus reducing the potential for cost shifts.

In addition to the basic facilities charge, the rates set forth in the stipulation contain a minimum monthly bill increment and critical peak pricing. These rate design elements also reduce the potential for cost shifting. The rate schedules address non-bypassable charges such as those for energy efficiency, demand side management, storm recovery costs and cyber security. These features reduce cost shifting. As testified to by witness Huber, the collaborative process has resulted in the assimilation of best practices from other jurisdictions. The rate regime presented to the Commission is a sophisticated one that comprehensively addresses the mandates from the General Assembly and merits Commission serious consideration and approval.

IV. ORS's Opposition to the Settlement is Not Well Founded Because it Relies on a Narrow Reading of Act 62 and Disregards Duke's established cost of service methodology

Q. CAN YOU SUMMARIZE THE ORS POSITION THAT THE PROPOSALS IN THE STIPULATION WITH RESPECT TO THE PERMANENT TARIFF RESULT IN SUBSTANTIAL COST SHIFTS IN COMPARISON AND IN CONTRADICTION TO THE POSITION OF THE SUPPORTING PARTIES THAT THE COST SHIFTS ARE REDUCED SO AS TO COMPLY WITH ACT 62?

A. At a high level, ORS maintains that Duke has used an outdated cost of service study relied upon in its most recent rate case based on a single summer coincident peak that occurred in the summer of 2017. ORS maintains that this is flawed, and asserts that any valid cost of service study should be based on a winter coincident peak.[2] ORS maintains that this correction provides a cost shift from the self-generating residential customers of $37 per month ($444 per year) for DEP and $52 per month ($624 per year) for DEC. ORS recognizes that the features of the new proposed regime independent of the cost of service differences tend to offset a portion of the cost of service cost shifts;[3] however, ORS dismisses these non-COS affects to the cost shifts by discussing an element of the broader stipulation, the bring your own thermostat EE/DSM incentive for solar choice customers with electric heat, which would allow solar choice customers to contribute to reducing

[2] Witness Horii for the ORS relies on 2016 Resource Adequacy Studies which rely on Loss of Load Expectation Studies as a proxy for the winter peak cost of service study and offers an opinion but not evidence as to whether the result of the two analyses would be comparable. Horii testimony, pp. 9, 15, 18-19.

[3] Witness Horii adopts Duke witness Harris' non-cost of service cost shift reductions of $143 per year for DEP and $155 for DEC. Horii testimony, pp. 22-23.
ORS witness Horii relies upon a -0.10 price elasticity based on "industry literature." According to witness Horii, one factor relied upon to support the -0.10 "is whether customers volunteered for the TOU rate." Horii testimony, p. 21. Under the proposed stipulated net metering rate request, customer-owned generator customers **must** take service under the TOU rate.

winter peaks). Duke Energy plans to seek Commission approval for this program at a later date, and there will be opportunities for the Commission to consider those EE/DSM programs on their own merits in an open docket after the Company brings them forward.

Altering the proposed solar choice rates as suggested by ORS could very well close the door to continued residential solar development, which is counter to the overall legislative framework of Act 62. ORS's position is largely based on its reliance on a non-Commission approved cost of service methodology for Duke Energy's proposed solar choice tariffs—while all other rates would be based on the existing summer coincident peak method. I recommend that the Commission reject the anomalous result sought by ORS.

Q. DOES THE ORS PROMOTE A RATE REGIME THAT ATTEMPTS TO BALANCE THE CONFLICT IN THE GOAL OF ACT 62 TO INCENTIVIZE GREATER RENEWABLE GENERATION DEVELOPMENT WITH A GOAL OF ELIMINATING COST SHIFTS TO THE GREATEST EXTENT PRACTICABLE?

A. No. ORS candidly admits that its sole objective through its testimony is to identify cost shifts and eliminate them altogether. ORS' proposed rates are based on a zero-cost shift principle. Witness Horii states on page 32 of his testimony: "ORS recommends the Commission adopt the zero cost shift tariffs if the Commission determines that the elimination of the cost shift takes priority over the goal of Act 62 that look (*sic)* to minimize disruption of the solar industry in South Carolina. The primary focus of ORS in this proceeding is minimization of cost shifts which the zero cost shift tariffs would accomplish."

The Commission cannot comply with the mandate of Act 62 by accepting ORS' recommendation, which ignores the requirement that the new rate regime incentivize greater renewable development. ORS tacitly recognizes this and provides an alternative remedy. ORS states on page 32 of Witness Horii's testimony: "Should the Commission decide that a smaller amount of cost shift be recovered through the proposed Solar Choice Metering Tariffs, then one could simply replace the 'Cost shift to be added back to solar tariffs' values in row 5 of my Table 3 and then update the results shown in row 6 of that table to arrive at the percentage changes that would need to be applied to the proposed Permanent Tariffs." This recommendation conflicts with ORS' argument that the only correct way to establish rates in this case is to rely upon the ORS-sponsored cost of service study based on a winter coincident peak. The only remedy ORS presents that could comply with the dual goals of Act 62 is a rough compromise that is based on no valid rate making concepts whatsoever.

Q. THE ORS ARGUES THAT DUKE'S RELIANCE ON THE SUMMER COINCIDENT PEAK FOR PURPOSES OF ITS COST OF SERVICE STUDY IS OUTDATED AND FAULTY AND THAT THE PROPER ALLOCATION METHOD IS WINTER COINCIDENT PEAK. WHAT IS YOUR RESPONSE?

A. First, many aspects of ratemaking are highly subjective, but setting the appropriate cost allocation method may be the most subjective decision of all. The methods to choose from are numerous -- summer coincident peak, peak and average, summer winter peak and average, average and excess, peak and base, twelve-month coincident peak, to name only a few. South Carolina, North Carolina and FERC may and do use different cost of service allocation methods to allocate costs among

the various jurisdictions. Countless hours of hearing time have been consumed over the years where these issues have been debated. In my experience, with so much subjectivity involved and so many options to choose from, in most instances, those advocating for the various different methods understandably are motivated to promote a method that provides the result that most meets their self-served interests. Those advocating for the residential class dislike summer coincident peak because residential air conditioning demand contributes heavily to the peak and residential customers find it difficult to alter their usage patterns to avoid contributing to the peak. Industrial customers favor the coincident summer peak because they are better equipped to reduce load at the time of the system peak. This is one decision where the utility, though motivated to select the best method, is often less concerned in selecting the appropriate cost of service study than in selecting the appropriate revenue requirement to be allocated. Nevertheless, it is the utility that is responsible for planning its generation and transmission system to meet the demands on its system, not representatives of the various customer classes. Deference should be accorded to the utility in making cost of service rulings for that reason.

Contrary to ORS' argument that summer coincident peak is outdated and a more current analysis requires adherence to winter peak, that argument has been advanced but not accepted in general rate cases for Duke subsidiaries for years. The following quotation from the testimony of Duke witness Janice Hager in the most recent Duke Energy Carolinas general rate case in North Carolina exemplifies the position advocated and accepted to date:

> Given that the Company's generation and transmission investments being considered for cost recovery in this case were made based on summer peak planning, for consistency we have continued to use the summer peak for cost allocation. However, Company witness Michael Pirro has given some consideration to the winter peak in rate design.[4]

ORS itself approved of both Duke Energy Utilities' cost of service studies—including the use of the summer coincident peak allocator—in the utilities' most recent general rate cases, offering testimony that the Companies' "methodology provides a reasonable assessment and allocation of the Company's revenues, operating expenses and rate base items."[5] The proper forum in which to raise this issue is and has been the general rate case where all affected stakeholders can weigh in and where the Commission can make the most well-informed decision. Many decisions to be made more appropriately in other dockets will affect the rates to residential customers who install solar generators. A primary example is the avoided cost docket. Another is the IRP. In my view, trying the many avoided costs issues in this case would be a misplaced and ill-advised effort.

If the Commission were to follow ORS's recommendation and set rates for self-generating residential customers in this case on the basis of a winter peak cost of service study (or a proxy for such a study), an anomalous result would follow. Rates for one subclass of residential customers within the broader residential class

[4] Direct Testimony of Janice Hager, *In the Matter of Application of Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges*, N.C.U.C. Docket No. E-7, Sub 1214, Official Transcript of Hearing, Vol. XII, p. 192 (Sept. 3, 2020).

[5] *See, e.g.,* Direct Testimony of Michael Seaman-Huynh, *See, e.g. In Re: Application of Duke Energy Carolinas, LLC. For Adjustments in Electric Rate Schedules and Tariffs*, P.S.C. Docket No. 2018-319-E, Merits Hearing Transcript, Vol. VIII, pp. 2028-4 – 2028-5 (Mar. 27, 2019).

would have rates established outside of a general rate case on the basis of a different cost of service method than the rest of residential customers and all other customer classes. This is unwise. In my view, the Company is correct in basing its cost of service study in this case on the same cost of service allocation method established in its last general rate case and currently in effect to allocate the cost of service among all classes. Otherwise, cost recovery will be shifted inappropriately or costs will not be recovered on that basis alone.

V. The Benefits of Balanced Settlement that Addresses Competing Statutory Directives and that is Arrived at through Stakeholder Processes and Involving Compromise

Q. WHAT ARE YOUR OBSERVATIONS WITH RESPECT TO ESTABLISHING RATE ADJUSTMENTS THROUGH STIPULATIONS THAT REFLECT COMPROMISE REACHED BETWEEN VARIOUS STAKEHOLDERS SUCH AS THE ONE PRESENTED BY DUKE ENERGY IN THIS DOCKET?

A. Based on my 46 years of experience as an attorney appearing before public utility commissions ("PUC") and as a commissioner, my opinion is that PUCs are well advised in many cases to encourage parties to enter into stipulations where possible and for PUCs to approve them after satisfying themselves that the stipulation satisfies the public interest and the PUC's statutory objectives.

In North Carolina, for many years all proceedings before the NCUC were fully litigated. This meant that all the many expert and fact witnesses sponsored their testimony live from the witness stand, were aggressively cross examined, redirected, then examined by the commissioners, then examined again by the parties based on information elicited by the commissioners in their questions. Issues such as proforma and accounting adjustments and tariff changes, no matter

how inconsequential, were fully litigated. This process required time consuming preparation of the many witnesses, lengthy hearings, sometimes lasting up to months in length, voluminous transcripts, lengthy briefs and proposed orders, time consuming PUC deliberations and lengthy and comprehensive PUC orders often issued well after conclusion of the contested case.

In compliance with trends toward alternative dispute resolution in most tribunals, over time the process shifted to one in which the Commission encouraged resolution of contested dockets through settlement and stipulation in whole or in part. Indeed, in recent years the Commission has adopted requirements in its orders initiating dockets that the parties convene stakeholder groups to address issues and report to the Commission their conclusions before contested hearings are scheduled. From my observation, this evolving process has accelerated in recent years when many of the issues involve environmental considerations and issues over the costs and benefits of environmental attributes. Consequently, the number of parties and the variation of positions have increased. Of course, the PUC remains free to discourage settlements in any case and the right to disapprove or modify any settlement and always reserves the right to have the ultimate say on resolution of any issue in any case.

Benefits of resolving issues through collaboration, settlement and stipulation include substantial reductions in expense, most of which otherwise ultimately is borne by the ratepayer, reduction in the time parties and the commissioners spend in the hearing room, well-crafted ultimate PUC orders that are less likely to be appealed or to be reversed on appeal and quicker resolution of contested cases. In

my opinion the resulting orders, on balance, are superior to those issued after fully contested cases. After all, PUC orders themselves are the result of a collaborative, deliberative process, especially in commissions like those in South and North Carolina with seven commissioners. Consequently, PUC orders after contested cases often contain resolution of issues that not all commissioners would approve if resolving the case alone.

Q. HAS THE PROCESS FOLLOWED BY THE PARTIES LEADING TO THE STIPULATION PRESENTED TO THE COMMISSION IN THIS CASE PRODUCED AN APPROPRIATE PRODUCT IN COMPLIANCE WITH ACT 62?

A. Yes. The process leading to the stipulation presented to the Commission in these dockets is in my opinion one that results in resolution of issues in a productive way. Company witnesses Huber and Ford describe in detail the collaborative stakeholder process and the offline follow-up discussions leading to the agreement the parties reached. From my perspective, the agreement wisely resolves differences of opinion, addresses the mandate of Act 62 and provides the Commission with a resolution that should the Commission accept it will benefit consumers, the DER community and align with interests of the General Assembly.

Of course, as Witness Huber stresses, settlements resulting from a collaborative process are reached through an extensive give and take process. Evidentiary rules prevent the details of the give and take from becoming part of the public record. Nearly all parties would prefer some different aspects from those ultimately selected. But where some of the terms of the stipulation are accepted by the decision maker and others rejected, the value of the negotiated stipulation is

diminished if not completely undone. My understanding is that the rate regime set forth in the stipulation contains many interdependent parts that result in a comprehensive set of elements that mesh together to result in rates that fulfill the objectives of Act 62. The process is complicated by the need to establish interim as well as permanent rates. The parties maintain that should selected aspects of the stipulation be rejected by the Commission due to requests by parties that did not participate in the collaborative process, the parties will be forced to return to the drawing board and start the process anew.

VI. Conclusion

Q. AFTER EXAMINING THE PROVISIONS OF ACT 62 AND THE PREFILED TESTIMONY IN THIS DOCKET TO DATE WHAT IS YOUR CONCLUSION?

A. I find persuasive the testimony of Duke witnesses Huber and Harris. Using embedded cost of service studies and marginal cost studies upon which Duke relies in planning its system, "the Permanent Tariffs reduced the cross subsidization by 88% under the Marginal Cost Studies and 93% to 113% in the Embedded Cost of Service Studies in DEC's South Carolina service territory. In DEP's South Carolina service territory, the Permanent Tariffs reduced the cost subsidization by 53% under the Marginal Cost Studies and 109% to 145% under the Embedded Cost of Service Studies." Huber direct, p. 19. Reliance upon this evidence addressing cost shifts and upon the evidence supporting the conclusion that NEM rates requested in the proposed stipulation advance the goals of Act 62 of promoting customer-owned solar permits the Commission to fulfill the mandate given it by the General Assembly.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes, it does.

CERTIFICATE OF SERVICE

I hereby certify that the parties listed below have been served with a copy of the *Rebuttal Testimony of Edward Finley* filed on behalf of the South Carolina Coastal Conservation League, Southern Alliance for Clean Energy, and Upstate Forever by electronic mail or by deposit in the U.S. Mail, first-class, postage prepaid.

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This 22nd day of February, 2021.

s/ Katherine L. Mixson